



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2020-0706; FRL-10023-22-Region 3]

#### Air Plan Approval; Pennsylvania; Emissions Statement Rule Certification for the 2015

#### Ozone National Ambient Air Quality Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision fulfills Pennsylvania's emissions statement requirement for the 2015 ozone national ambient air quality standard (NAAQS). This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2020-0706 at <https://www.regulations.gov>, or via email to [Talley.David@epa.gov](mailto:Talley.David@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please

contact the person identified in the **For Further Information Contact** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2053. Ms. Nichols can also be reached via electronic mail at [Nichols.Serena@epa.gov](mailto:Nichols.Serena@epa.gov).

**SUPPLEMENTARY INFORMATION:** On April 23, 2020, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to the Pennsylvania SIP intended to satisfy the Commonwealth's obligations under the CAA related to emissions statements for the 2015 ozone NAAQS.

## **I. Background**

On October 26, 2015, EPA revised the ozone NAAQS from 0.075 parts per million (ppm) to 0.070 ppm. See 80 FR 65291. Subsequently, on June 4, 2018, EPA designated the Philadelphia-Wilmington-Atlantic City (PA-NJ-MD-DE) Area as a marginal nonattainment area for the 2015 ozone NAAQS. See 83 FR 25776. Pennsylvania's portion of this area includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties. See 40 CFR 81.339. Section 182 of the CAA identifies plan submissions and requirements for ozone nonattainment areas. Specifically, section 182(a)(3)(B) of the CAA requires that states develop and submit rules which establish annual reporting requirements for certain stationary sources. Sources that are within marginal (or worse) ozone nonattainment areas must annually report the actual emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) to the state. However, states may waive reporting requirements for sources that emit under 25 tons per year (tpy) of NO<sub>x</sub> and VOC if the state provides an inventory of emissions from such class or category of sources. See CAA section 182(a)(3)(B)(ii).

Additionally, Pennsylvania is located in the ozone transport region (OTR) established by Congress in section 184 of the CAA. Pursuant to section 184(b)(2), any stationary source that emits or has the potential to emit at least 50 tpy of VOC shall be considered a major stationary source and subject to the requirements which would be applicable to major stationary sources if the area were classified as a moderate nonattainment area. See CAA section 184. Thus, states within the OTR are subject to plan requirements in CAA section 182(b) applicable to moderate nonattainment areas. Also, section 182(f)(1) of the CAA requires that the plan provisions required for major stationary sources of VOC also apply to major stationary sources of NO<sub>x</sub> for states with moderate (or worse) ozone nonattainment areas. A major stationary source of NO<sub>x</sub> is defined as a stationary facility or source of air pollutants which directly emits or has the potential to emit 100 tpy or more of NO<sub>x</sub>. See CAA section 302(j). Because Pennsylvania is located in the OTR, Pennsylvania sources that are located in ozone attainment areas and emit above 50 tpy of VOC or 100 tpy of NO<sub>x</sub> are considered major sources and also subject to the requirements of major stationary sources in moderate (or worse) nonattainment area, such as an emissions statement submission required by CAA section 182(a)(3)(B). See CAA sections 182(f) and 184(b)(2).

## **II. Summary of SIP Revision and EPA Analysis**

Pennsylvania's emissions statement requirements are codified at 25 Pa Code chapter 135. Specifically, section 135.21, in accordance with CAA section 182(a)(3)(B), applies to NO<sub>x</sub> and VOC sources within marginal (or worse) nonattainment areas, as well as major NO<sub>x</sub> and VOC sources located in attainment areas located within the OTR (i.e. the remainder of the Commonwealth). Affected sources are required annually to provide PADEP with a statement containing the source's actual NO<sub>x</sub> and VOC emissions, the method used to calculate those emissions, the time period over which the calculations are based, and a certification by an appropriate company officer that the statement is accurate. 25 Pa Code 135.21 also contains a

waiver for sources emitting less than 25 tpy, in accordance with CAA section 182(a)(3)(B)(ii).

Additionally, 25 Pa Code 135.5 contains recordkeeping requirements necessary to document the data presented in the annual emissions statements.

On January 12, 1995, EPA determined that 25 Pa Code sections 135.5 and 135.21 were adequate for purposes of implementing the requirements of CAA section 182(a)(3)(B) and took final action to incorporate those sections into the Pennsylvania SIP. See 60 FR 2881.

Additionally, on June 6, 2018, EPA took final action to approve a SIP submittal from the Commonwealth of Pennsylvania in which PADEP certified that its existing emissions statement regulations remained adequate to implement the requirements of CAA section 182(a)(3)(B) as they pertained to the 2008 ozone NAAQS. Similarly, PADEP's April 23, 2020 submittal contains a certification that the existing emissions statement program remains adequate under the revised, 2015 ozone NAAQS.

### **III. Proposed Action**

EPA finds that PADEP's existing SIP-approved emissions statement regulations continue to satisfy CAA section 182(a)(3)(B) because the existing rules are applicable to the entire Commonwealth of Pennsylvania and require stationary sources that emit NO<sub>x</sub> or VOC (at required thresholds above 25 tpy in designated ozone nonattainment areas and above 50 tpy VOC or 100 tpy NO<sub>x</sub> in ozone attainment areas in the OTR) to submit an emissions statement to PADEP detailing the sources' emissions. Therefore, EPA is proposing to approve PADEP's April 23, 2020 submittal as a revision to the Pennsylvania SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided

that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to Pennsylvania's SIP-approved emissions statement regulations, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 6, 2021

Diana Esher,  
Acting Regional Administrator,  
Region III.